**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.2054 OF 1998**

Wing Commander Jitendra Sharma,
aged Adult, Indian Inhabitant,
Senior Pilot, Helicopter,
residing at 27 Amber Apartment,
Narayan Dabholkar Road,
Malabar Hill,
Mumbai 400 006 ...Petitioner.

V/s.

1.The State of Maharashtra
2.The Secretary General Administration
Department, Government of Maharashtra,
Mantralaya, Mumbai 400 032
3.The Maharashtra Administrative Tribunal
(to be served through the Government
Pleader, Writ Cell, Mumbai) ...Respondents.

Ms.Usha Purohit for Petitioner.

Shri N.P.Deshpande, A.G.P. for Respondent Nos.1 to 3.

**CORAM: S.B.MHASE &**
**S.R.DONGAONKAR, JJ.**
**DATE : 5th May, 2006.**

**JUDGMENT : (Per S.R.Dongaonkar, J.)**

1. The Petitioner has approached this Court under Article 226 of the Constitution of India, for seeking the writ of certiorari or any other writ or direction in the nature of certiorari, for quashing the order passed by the Maharashtra Administrative Tribunal, Bombay in Original Application No.744 of 1993 dated April 3, 1998 by which, the Maharashtra Administrative Tribunal had

confirmed the order of Government of Maharashtra, by which the Petitioner was compulsorily retired with effect from 31st July, 1993. Order is in pursuance of the findings and conclusions reached by the disciplinary authority, Government of Maharashtra.

2. The facts leading to this Petition are as under:

> The Petitioner, was on deputation to the Government of Maharashtra from Government of India, Ministry of Defence, Indian Air Force and was appointed as Helicopter Pilot on terms and conditions of deputations prescribed by Government of India. Later on, he was permanently absorbed in the service of Government of Maharashtra in consultation with the Government of India, Ministry of Defence and Indian Air Force. The terms and conditions of his appointment were settled as per the resolution dated 7th July, 1987 issued by the Government of Maharashtra (General Administration Department, bearing No.AVN-1085/1008/II/C.R.NO.103/86/XXVIII-A) Besides other conditions, the said resolution

shows that the Petitioner had completed 20 years of service in the Indian Airforce on 31st October, 1986. The Government of India has to bear service liability for his pay and service in the Indian Air Force for pensionary benefits, etc. The said resolution also shows that the Petitioner was to draw other allowance subject to the service conditions and other rules as may be prescribed by the Government of Maharashtra from time to time. It is alleged that one Mr.Dixit was the Director General of the aviation ("DCA" for the sake of brevity) till the year 1987 when he retired from the said post. After his retirement, the Petitioner was appointed as the acting DCA and was holding the said charge between August, 1987 to February, 1988. It is necessary to note that at the relevant time, there was one maintenance agency which was looking after the maintenance of State helicopters working under the name and style of Messrs Airworks India Limited. The Petitioner, as senior pilot, found that the charges of the said agency for maintenance of the State helicopters were exorbitant and were to the tune of Rs.4,50,000/- per annum. It was also felt by

the Petitioner that in the said agency, there were no efficient engineers, competent enough, especially after one Karnik, working as engineer with that agency, resigned from that agency. The then Minister for Civil Aviation, Dr. Shrikant Jichkar, asked for a report in writing from the Petitioner in respect of the said agency which was submitted by the Petitioner. The Petitioner, had mentioned some instances of lapses on the part of maintenance agency and also submitted that the said agency's charges of maintenance were unreasonably high and causing financial losses to the Government. Therefore, at the instance of Minister for Civil Aviation, an inquiry was started against Mr.Dixit, i.e., the Director General of Civil Aviation. The said inquiry was conducted and concluded. In that inquiry, allegations against M/s. Airworks India Limited were levelled at the instance of the Petitioner. So the said agency was hurt as there was demonstrable decrease in the earnings of the said agency. It is claimed that the tenders for such maintenance were floated and the said company submitted the quotation of Rs.47,000/-. The inquiry into the complaint of

M/s. Airworks India Limited was instituted against the Petitioner for various charges. Shri V.T.Chari was appointed as Inquiring Authority who had conducted the inquiry of Mr.Dixit, so also, this inquiry was conducted by him. The Petitioner has contended that the said Chari had an occasion to read and appreciate all oral and documentary evidence placed before him regarding the incompetence of the Airworks India Limited as pointed out by the Petitioner. There were some observations against the Petitioner in the report, in the matter of inquiry of Mr.Dixit. The Petitioner was the only witness in the said inquiry. The complaint of M/s. Airworks India Limited against the Petitioner was a consequence of the conclusion of the said inquiry. Therefore, the Petitioner contends that the inquiry against him was with bias and consequently, the report submitted by Shri Chari against the accused for the charges of lack of devotion of duty, integrity and unbecoming of Government servant and the decision of the disciplinary authority, i.e., Government of Maharashtra, holding the Petitioner guilty and inflicting major penalty of compulsory retirement was illegal. The

Petitioner challenged the said order of compulsory retirement, in Original Application No.744 of 1993 before the Maharashtra Administrative Tribunal. Therein, he challenged the inquiry report as well as the order of compulsory retirement.

3. The Maharashtra Administrative Tribunal vide its judgment dated 3.4.1998 dismissed the said application whereby punishment of compulsory retirement imposed on the Petitioner and the consequent order was upheld.

4. The learned counsel for the Petitioner, Smt. Usha Purohit, contended that the Inquiring Authority had bias against the Petitioner. The said inquiry was motivated with an intention to cast stigma on him and consequently, mar his service career as helicopter pilot in the Government of Maharashtra as he was instrument behind the report submitted to the Hon’ble Minister, against M/s. Airworks India Limited. It is further contended that the charges levelled against the Petitioner, are not at all proved. It is further contended that the Maharashtra Administrative Tribunal has taken a wrong view of matter and erred in dismissing the application of the Petitioner to set aside the order

of compulsory retirement inflicted on him. The non-compliance of the rules, (Maharashtra Civil Services (Discipline and Appeal) Rules, 1979) during the inquiry has also been asserted. It is submitted that the order imposing major penalty of compulsory retirement passed by the Government of Maharashtra is perverse and incorrect and has also depicted non-application of mind, it has been passed mechanically and is malafide. So, the order of Maharashtra Administrative Tribunal should be set aside.

5. The learned counsel for the Petitioner has relied on the observations of the Supreme Court in **"Manak Lal v. Dr.Prem Chand Singhvi"** (AIR 1957, SC 425) that in judicial or quasi-judicial proceedings, justice must not only be done but must appear to be done to the litigating public and the inquiry before Tribunal must leave no room for a reasonable apprehension in the mind of the lawyer that the Tribunal may have been even indirectly influenced by any bias. The learned counsel has further relied on the observations of Supreme Court in **"S.Parthasarathi v. State of A.P."** (AIR 1973 SC 2701) wherein it has been observed as under:

> "The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each

other.We think that the reviewing authority must mane (make) a determination on the basis of the whole evidence before it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have.This follows from the principle that justice must not only be done but seem to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, M.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (1968) 3 WLR 694 at p.707-etc.)"

The learned counsel for the Petitioner has also taken us through the observations of Apex Court in **"State of U.P. v. Mohammad Nooh"** (AIR 1958 SC 86) and in **"State of Punjab v. Dewan Chuni Lal"** (AIR 1970 SC 2086). She contends that the proper opportunity to the delinquent officer to defend himself needs to be given in departmental inquiry. She contends that the inquiry and consequently, the findings and order passed on the basis of the said inquiry, are biased as the Petitioner has not been granted sufficient opportunity to defend his case in the inquiry, more so by engaging lawyer.

6. It needs to be mentioned that the learned counsel for the Petitioner has, on facts contended that the charges levelled against the Petitioner were not proved by taking us through the enquiry report as well as the judgment of the Maharashtra Administrative Tribunal. Besides this, it is further submitted that the Disciplinary Authority and also the Maharashtra Administrative Tribunal has not appreciated the evidence on record correctly and, therefore, arrived at wrong conclusions. So also, the Disciplinary Authority did not give sufficient opportunity to the Petitioner, whereby committed an error by accepting findings of the enquiring authority and passing an order of compulsory retirement. All these contentions will be dealt with at

the proper place in the latter part of the judgment.

7. The learned counsel for the State, Shri Deshpande has, at the time of making submissions , submitted that there was no bias on the part of enquiring authority There is no material on record to show that he had some bias against the present Petitioner. It is further submitted by him that, on the contrary, there is material available on record to show that he did not possess any such bias so as to render inquiry conducted by him and the findings recorded by him; liable, for vitiating. It is further submitted that the witness, who is termed as material witness, Shri Phull, was not available, despite, attempts were made to see that he comes and deposes in the enquiry. According to him, there was delay in taking objection to the enquiry by the Petitioner. He has claimed that the Petition should be dismissed.

8. It needs to be mentioned at this stage that the learned counsel for the State had not produced any material at the relevant time, that is, the enquiry papers as well as the submissions of the respondent. He was therefore, directed to submit papers of enquiry of the petitioner and relevant papers, at the earliest.

9. He has submitted the same after some days and also placed on record authorities and the submissions relied by him. The submissions made by him orally, has been repeated. However, he has relied on certain authorities, in respect of his submissions. Mainly, according to him, there is an evidence supporting the charges levelled against the petitioner which is available on record. Neither the administrative Tribunal nor this Court can re-appreciate or review the evidence on record to come to the finding that the charges are not proved. According to him, this is the matter to be decided by the enquiring authority and Disciplinary Authority. He has specifically contended that the Petitioner had challenged the Enquiry Officer's report in Writ Petition No.250 of 1993 which was rejected by the Division Bench of this Court. According to him, therefore, as this Court has applied its mind to the legality of the Enquiry Officer's report, it will now not be open for the petitioner to agitate the same challenge in another writ petition, that is, this Petition. He has relied on **State of U.P. and Others v. Ramashyraya Yadav and Another**, reported in (1996) 3 SCC 332. According to him, the Enquiry Officer, Shri V.T.Chari himself has stated in the enquiry report that he was no biased and also that, he has considered all the facts and circumstances in proper perspective by

giving liberty to the Petitioner. He has also relied on certain other authorities in respect of his submissions.

10. We have called the papers of earlier Writ Petition No.250 of 1993 filed by the Petitioner. The said petition was filed by the Petitioner to take exceptions to the report of the Enquiry Officer. Several contentions were raised in the said Petition to challenge the said enquiry report and it was claimed that the said enquiry report was biased and prejudiced and for appointment of impartial Enquiry Officer, claiming quashing of that enquiry report. However, the said petition was dismissed summarily by the Division Bench of this Court ( Mohta & Jhunjhunwala, JJ.) by the order dated 23rd February, 1993 which reads "no reason to interfere with the Enquiry Report. The petition summarily dismissed."

11. It is well settled that when the Petitions are summarily dismissed, they are not treated as decided on merits. And, therefore, the second Petition, for taking exception to the action taken in further proceedings like accepting the enquiry report, etc. can not operate on res-judicata.

12. Further, it seems that the matter has been

decided by the Maharashtra Administrative Tribunal on merits in O.A.No.744 of 1993 dated 03.04.1998 and that order is challenged in this Petition. Disciplinary actions and final orders passed thereon in respect of State Government servants can be taken up to the Maharashtra Administrative Tribunal for decision on merits. Accordingly, this matter was taken up there and finally decided. Therefore, in our opinion, this Petition can not be refused to be considered as Petitioner had preferred earlier Writ Petition No.250 of 1993 to challenge the enquiry report at a very premature stage.

13. This takes us to consider the another limb of the contentions of the Respondent-State that the Petitioner has suppressed the fact of dismissal of his earlier Petition before this Court to challenge the Enquiry Report on the ground of bias, etc. In this regard, the authority referred by the State is **State of U.P. & Others v. Ramashyraya Yadav and Anothe**r reported in (1996)3 SCC 332. It is necessary to note that this is not a case where suppression of the fact of writ petition filed by the petitioner earlier, is not resulted in injustice or misleading the Maharashtra Administrative Tribunal or this Court. Both the parties, are in the knowledge of the said fact.

Decision therein, was of dismissal of the writ petition with the observations "no reason to interfere". Therefore, much out of this fact can not be made out to result in rejection of the instant petition. And, therefore, challenge of the Respondent-State on this ground to the Petition fails.

14. The Petitioner seeks to challenge the order of the compulsory retirement served on the Petitioner, mainly on the ground, that the enquiry is vitiated due to bias in the enquiring authority. The above referred, judgments of the Supreme Court precisely lay down the law that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to the domestic enquiries and administrative proceedings. Fundamental principles of natural justice, require authority empowered to decide the dispute between the opposing parties must be one without bias by which it is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. Whether there is substantial possibility of bias animating the mind of the enquiring authority in deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. The learned counsel for the Petitioner has submitted that in this case, the

enquiry is vitiated due to the bias on the part of the enquiring authority whereas the Opponent-State has disputed the same.

15. In order to appreciate rival contentions, it is necessary to note a few facts. Here is the case where the enquiring authority, Shri V.T.Chari, had held enquiry against one Shri Dixit. In that case, report of the present Petitioner was considered, so also, the evidence. Some observations were made by him against the present Petitioner. In that case delinquent officer was exonerated.

16. In this case, the Petitioner had taken specific objection to the appointment of Shri V.T.Chari as an Enquiring Authority. According to the Petitioner, initial letter of protest for appointment of Shri V.T.Chari as enquiring authority was made at the earliest. The present Petitioner was witness in the said Dixit’s enquiry. Statements prejudicial to the present Petitioner were accepted by Shri Chari in proof of the defence of Shri Dixit.

17. The learned counsel for the State has tried to defend appointment of Shri V.T.Chari, contending that he was the officer of high rank and the report submitted by

him shows that he has not conducted enquiry with bias.

18. It is pertinent to note that the Enquiring Authority has stated regarding his report that he conducted enquiry with utmost fairness, impartiality and completely free from bias. Records speak for themselves in this regard.

19. These very observations speak volumes. The fact that enquiring authority was required to mention this aspect in his enquiry report will lead to conclusion that the officer who was facing enquiry, had reasonable apprehensions in his mind and he had ventilated the same.

20. One charge may be referred in this regard that the Petitioner was responsible for flying high dignitaries and therefore, he had to maintain utmost fairness and carefulness in running the helicopters. Grounding of two helicopters as contended by the State at a time is alleged to be an act of inefficiency or negligence. Charges of misconduct in such type can not be said to be attracted, unless there was full proof evidence to show that the helicopters were worth of flying and they were deliberately grounded so as to cause financial loss to the Government. From record, it

does not appear.

21. Further the Enquiry Report shows that the important witnesses, Mr.Phull and Mr.R.Prasad, were not examined by the Enquiring Authority. No doubt, it is explained by saying that several times, attempts were made to call them as witnesses, however, they did not appear. It is necessary to bear in mind that the report of Shri Phull was an important basis for which Petitioner was enquired with. And therefore, in absence of their evidence, as Petitioner had no opportunity to cross-examine them and extract the truth. The enquiring authority can certainly came to a conclusion that whatever was the evidence, it was used to justify charges against the Petitioner. However, this suspicion in the mind of the Petitioner can not be overlooked by the independent authorities.

22. Here is the case where the Minister for Civil Aviation, Dr. Shrikant Jichkar was examined on behalf of the Petitioner. He does not seem to have been cross-examined. In the Enquiry Report, his evidence has been referred. It is a matter of record that the Petitioner had called tenders wherein earlier maintenance company, Messrs Airworks India Limited had reduced their amount of maintenance from sum of Rs.4.5

lakhs to sum of Rs.47,000/-. Quite a large difference in the earlier tender and the latter tender. The justification given by Messrs Airworks India Limited that they did not want Mr.Karnik to get the maintenance contract who had left the Messrs Airworks India Limited and somehow, they wanted to obtain the tender, can not be accepted. It is further necessary to bear in mind that this Messrs Airworks India Limited had specific grudge against the present petitioner as the Petitioner had submitted report to the Minister. Whatever may be the truth, the fact remains that the Petitioner had become an instrument to scuttle the maintenance contract of Messrs Airworks India Limited. Therefore, taking totality of the circumstances into consideration, possibility of bias being existed in the mind of Enquiring Authority, can not be said to be without any basis. Merely because Enquiring Authority has stated that he had acted with utmost faithfulness in conducting enquiry and without any bias, that would not be sufficient explanation to justify nonexistence of bias.

23. Merely because the appointment of enquiring authority was approved by Chief Minister may not cure the infirmity.

24. On perusal of the reasons given by the

Maharashtra Administrative Tribunal, on this count, it is difficult to hold that those are sustainable vis-a-vis the above facts.

25. Record of the conduct of the enquiry proceedings has been filed by the Petitioner. It shows at the time even when Petitioner has some justified reasons for remaining absent, matter was proceeded. It is also apparent that the claims of the adjournments at the instance of the Petitioner were considered an attempt of protraction. In this view of the matter, the above inference is further fortified.

26. It is true that in the case of **Union of India & Others v. C.M.Amrute & Others** reported in (2006(2) Bombay C.R.128, it has been observed

> 4. The position of law in this regard is well settled. It is restated in a judgment of the Supreme Court of India reported in (A.I.R.2000 S.C.32), where a Bench of three Honourable Judges of the Supreme Court of India have held that Tribunals or the High Court exercising its jurisdiction under Article 226 of the Constitution cannot reappreciate or revaluate the evidence which form basis of the

> conclusion rendered by the Disciplinary Authority. The Tribunal as also this Court cannot reappreciate the evidence or reconsider the adequacy or reliability of that evidence in a proceeding where the order of punishment is imposed. The discretion of the Disciplinary Authority cannot be interfered with solely because the evidence as accepted by the Disciplinary Authority was either inadequacy or unreliable. In effect the dicta of the Supreme Court over all these years is that the Appellate Tribunals or Revisional Tribunals or independent Tribunals and the High Court under Article 226 of the Constitution should not interfere with the order directing penalty except where there is disproportionate award of punishment and there cannot be any interference where from some evidence which is accepted by the Disciplinary Authority and punishment is meted out."

27. But here is the case where we are not considering the enquiry report of the Enquiring Authority as an appeal. We are trying to find out whether there existed any bias in the Enquiring

Authority against the Petitioner or whether it was appearing so to create reasonable apprehensions in the mind of the Petitioner while facing inquiry that he would not get justice. Answer to this in instant case would be in affirmative.

28. It is tried by the learned counsel for the State to submit that there was delay in challenging alleged existence of bias in the enquiry by the Petitioner. Nonetheless, it seems that he had taken this challenge at preliminary level itself which was not accepted. It is not the case of the Respondent-State that there was no other enquiry officer available, except Shri V.T.Chari to conduct his enquiry. Possibility of other officers of the level of Shri V.T.Chari would have been available to undertake his enquiry is very much there. The fact that his appointment was accepted and approved at the Chief Minister level will not mitigate the result because of the existence of apparent bias in the mind of the Enquiring Authority. In this view of the matter, therefore, even without considering the fact as to whether charges are proved or not, existence of apparent bias in the mind of the Enquiring Authority, will vitiate enquiry for not following the principles of fairness, propriety and natural justice. There may not

be any malafides but then motivated enquiry at the instance of Messrs Airworks India Limited can not be overruled. As such, the Petition must succeed.

29. The Petitioner has claimed the relief of quashing the order of compulsory retirement dated 3rd April,1998. The quashing of compulsory retirement as major penalty has also been claimed.

30. At the time of hearing of the matter, the learned counsel for the Petitioner, fairly submitted that the Petitioner wanted to get stigma of his 'inefficiency' extinguished. It has been submitted that after compulsory retirement, though there was no employment for the Petitioner till February, 1996, he has been in service of Sahara Airways, Greater Deccan Airways and later on in private employments. The figures of the salaries and other perks are not supplied. The Petitioner has also submitted copy of the Gazette Notification to show that the age of the retirement of the helicopter pilot would be of 65 years.

31. In our opinion, it is not a case to order reinstatement of the Petitioner, in these circumstances, although he would entitle to get his stigma removed, i.e., compulsory retirement by way of penalty; and some

monetary benefits, of course, as per final order.

32. Before parting with the case, it needs to be added that in the matter of departmental enquiry, it is necessary for the State to appoint enquiry officer or enquiring authority preferably who has no connection with the subject matter, his close acquaintance with the delinquent or the complainant or the witness in the enquiries, except for official reason so as to avoid charges of bias. In this case, it is made to appear that the Petitioner represented to the Government regarding the suspicion against the maintenance agency. In such cases when some parties are lossers, they are likely to make grievances against such officers. It may be that in some cases; there may be substance in some allegations but all the same, to protect the honest Government officers who have taken some actions, such complaints should be enquired with by the officers who are totally unconnected with the parties concerned or with earlier matter of enquiry or who are seemed to have no bias in the subject matter or favour of the complainant or possible to have animus against the charged officers. The joy of victimisation of any officer for a moment may cause huge loss to the Government in such cases.

33. In the circumstances, the Petition partly succeeds. The order of the compulsory retirement of the Petitioner dated 3rd April, 1998 passed by the State of Maharashtra confirmed by the Maharashtra Administrative Tribunal Original Application 744 of 1993 is hereby quashed. However, his reinstatement is not ordered considering his age and also availability of pension from Air Force. It is clarified that the said order shall not carry any stigma of inefficiency or misconduct on the Petitioner.

34. The Petitioner shall be entitled for 50% wages minus total emoluments received from his private employment after the order of compulsory retirement till the age of 58 years, i.e. normal age of the retirement of the State Government employees.

**(S.R.Dongaonkar,J.)** **(S.B.Mhase,J.)**